

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARIA KARLA TERRAZA,) Case No. 3:16-cv-03994-JST
individually and on Behalf)
of the SAFEWAY 401(K) PLAN,)

Plaintiff,)

vs.)

SAFEWAY INC., et al.)

Defendant.)
-----)

DENNIS M. LORENZ,) Case No. 4:16-cv-04903-JST

Plaintiff,)

vs.)

SAFEWAY INC., et al.)

Defendants.)
-----)

VIDEOTAPED DEPOSITION OF
STEVEN KARL GISSINER
SAN FRANCISCO, CALIFORNIA
JUNE 14, 2018

REPORTED BY: MICHAEL CUNDY, CSR 12271

1 of assets within the plan. They may -- might want to know,
2 you know, how has the percentage of assets in the target
3 date funds changed over time? How have certain funds done
4 in terms of asset accumulation? Are we seeing more money,
5 for example, move from stable value to other investments?
6 So any number of these things can be part of a benchmarking
7 exercise.

8 Q Okay. Maybe we're unclear about, like, what
9 the -- what I mean by benchmarking.

10 So are you referring to -- I was referring to
11 benchmarking only in terms of the fees that the plan pays,
12 so would that -- are you referring to benchmarking in terms
13 of what other plans asset distribution is?

14 A As I indicated before, it could be, yes.

15 Q Okay, okay. All right. So let's see. All right.
16 Why don't we turn to your report, which was marked
17 as Exhibit 159 earlier?

18 So I'm going to be referring to JPMorgan
19 Retirement Plan Services and Great-West Retirement
20 Services, also known as Empower interchangeably as JPMorgan
21 throughout this deposition.

22 Is that okay with you?

23 A That's fine.

24 Q Okay. So why don't we turn to paragraph 53 on
25 page -- let's see -- on page 32?

1 And -- so in this section from paragraph 53 and
2 ending in paragraph 57, you determined that JPMorgan
3 provided standard and nonstandard administrative services;
4 correct?

5 A That's correct.

6 Q Okay. And the reason you conducted the analysis
7 is that, according to paragraph 53, you state, in order to
8 evaluate the reasonableness of fees paid to administrative
9 service providers, one must consider, among other things,
10 the range of services provided in exchange for such fees;
11 is that correct?

12 A That's correct.

13 Q And how did you determine that JPMorgan provided
14 nonstandard administrative services? Was it based on your
15 industry experience?

16 A No. It was based on a review of the plan
17 documents, the administrative service agreement, the
18 meeting minutes provided as part of the production.

19 Q Right.

20 A So it was based on all of those -- all of those
21 document -- all of that documentation that was specific to
22 a Safeway plan.

23 Q Okay. But objectively, like, how did you define
24 what services are standard versus nonstandard?

25 A Well, to some extent, there's definition of

1 nonstandard services in the service agreement itself.

2 Q Okay. So it's based on JPMorgan's own definition
3 of what's standard and what's not standard?

4 A Not just --

5 MR. HUSS: Objection.

6 THE WITNESS: Not just their definition, also
7 based on my experience as well.

8 BY MR. TANG:

9 Q Okay. And so, based on your experience, is
10 JPMorgan's definition of standard versus nonstandard
11 services matched up to with what the industry tends to see
12 as standard and nonstandard?

13 MR. HUSS: Objection.

14 THE WITNESS: From a general perspective, I would
15 say so, yes.

16 BY MR. TANG:

17 Q Okay. What do you mean by "a general
18 perspective"? Are there any deviations?

19 A I think it just simply depends on the provider
20 itself and the specific plan itself, but as I define, you
21 know, the standard record keeping services --

22 Q Yes.

23 A -- that's generally consistent across the
24 industry.

25 Q Okay.

1 A Where you deviate into nonstandard services would
2 be some of the elements that I highlighted here with
3 respect to the Safeway plan.

4 Q Right. So I guess what I'm trying to get at is,
5 like, how -- how did you determine what is -- well, you
6 said earlier that you determined what was nonstandard based
7 on JPMorgan's service provider agreement; correct?

8 MR. HUSS: Objection.

9 BY MR. TANG:

10 Q In part, at least?

11 A Uh-huh.

12 Q And then the other part is just based on your
13 industry experience?

14 A Yes. So, for example, in the JPMorgan agreement,
15 they list various types of services that are available to
16 the plan sponsor, and there is an indication in that
17 description of services as to whether an additional fee may
18 or may not be applicable.

19 Q Okay.

20 A In the case of the Safeway plan, those nonstandard
21 services, which would be subject to an additional fee, were
22 not subject to an additional fee.

23 So as I view a service agreement, if something is
24 listed as a potential additional service, first the client
25 has to elect that service. Second, there may or may not be

1 a charge associated with that additional service.

2 So whenever you see a service agreement listing
3 additional services with a potential for an additional fee,
4 that, in my view, would be considered to be a nonstandard
5 service.

6 Q Okay. But isn't it possible that JPMorgan can
7 identify some services as nonstandard while other service
8 providers would count that service as a standard service?

9 MR. HUSS: Objection.

10 THE WITNESS: It just depends on -- I would have
11 to look at the specific agreement to determine that, but in
12 general, what I saw in the agreement was relatively
13 consistent with the rest of the provider industry.

14 BY MR. TANG:

15 Q Okay. And -- okay.

16 So in paragraph 55, you provide a list of
17 nonstandard services, and you state, for example, JPMRPS
18 calculated, processed, and reported Safeway stock dividends
19 that were passed through to plan participants. JPMRPS also
20 provided services related to distribution of proxy
21 information specific to Safeway stock, including the
22 preparation of files containing shareholder information.

23 Were there any other nonstandard services that
24 JPMorgan provided besides these examples?

25 A Yeah. Those are listed in paragraph 56.

1 Q Okay. So then in paragraph 56, you state that --

2 A And 57.

3 Q And 57, okay. So in 56, you state that,
4 consistent with the responsibilities of a full service
5 provider, JPMRPS also provided participants and plan
6 sponsor communication services on behalf of Safeway and
7 plan participants.

8 So -- and you describe JPMRPS mailing summary plan
9 descriptions to plan participants and also preparing and
10 distributing quarterly participant statements.

11 So these services are also nonstandard; correct?

12 A No. That's not what is stated there.

13 Q Okay. Can you -- can you explain what you mean
14 then?

15 A Well, I say, consistent with the responsibilities
16 of the full service provider, then JPMorgan performed all
17 of these services.

18 Q Okay.

19 A If you continue to read the rest of the paragraph,
20 it states that customized enrollment materials would be
21 indicative of an enhanced level of service.

22 Q Okay. So these customized enrollment materials,
23 including posters, postcards, and e-mails, that's a non --
24 a nonstandard service?

25 A For the most part, correct.

1 Q Okay. And at the end of that paragraph, you say
2 that JPMR -- JPMRPS agreeing not to impose additional fees
3 for the preparation and mailing of these materials, which I
4 take it to mean these customized materials, is indicative
5 of an enhanced level of service.

6 So if JPMorgan isn't charging any additional fees
7 for this enhanced service, why is it a part of your
8 calculations as opposed -- your calculation that what
9 JPMorgan charges is reasonable?

10 MR. HUSS: Objection.

11 THE WITNESS: I'm not sure I follow.

12 BY MR. TANG:

13 Q Okay. So -- so you state in paragraph 56 that
14 JPMorgan provides nonstandard services when they provide
15 customized enrollment materials, including posters,
16 postcards, and e-mails; correct?

17 A Yes.

18 Q But JPMorgan doesn't charge extra fees for this;
19 right?

20 A It's incorporated into the total fee that they
21 charge, the \$65 that -- the 67, the 65, the \$52 fee. All
22 of those services were incorporated into the single
23 participant fee.

24 Q Okay. And then you also list the -- in paragraph
25 57, you also provide that the Safeway plan contracted with

1 Buck Consultants to host a website, and JPMorgan's work
2 with Buck Consultants in relation to the website is also an
3 enhanced service.

4 A Yes. This is not something that's commonly done.

5 Q Okay. So besides everything listed in paragraphs
6 55 to 57, are there any other additional nonstandard
7 services that JPMorgan provided to the plan?

8 A There could have been additional services that
9 they might have provided relative to consulting on plan
10 mergers or divestitures, but I did not list them here.

11 Q Okay. But do you recall if they did provide those
12 services?

13 A Not to my recollection, no.

14 Q Okay. So paragraphs 55 to 57 represent the
15 universe of enhanced services that you are aware of that
16 JPMorgan provided to the Safeway plan?

17 MR. HUSS: Objection.

18 THE WITNESS: Based on my review of the documents,
19 that's what I chose to include in the report.

20 BY MR. TANG:

21 Q So there are nonstandard services that you chose
22 not to include in you report?

23 A No. I don't recollect any additional nonstandard
24 services. I indicated before, there could have been other
25 services that I just didn't list here.

1 report, paragraph 67?

2 A Okay.

3 Q Okay. And if you can turn to page 41, towards the
4 latter half of that paragraph where you state, Plan cost
5 benchmarking is not intended to determine what the specific
6 costs of a plan should be, and one cannot assume that the
7 cost of providing services for participants with different
8 account balances are the same or determine whether fees are
9 reasonable or unreasonable without considering plan
10 provisions, servicing requirements, asset allocations, and
11 all other factors that influence plan cost.

12 Is that what you were referring to when it comes
13 to all of the variables in determining --

14 A Yes. Again, I have mentioned this many times
15 throughout the day.

16 Q Right. So wouldn't you agree that an RFP would
17 consider all of the factors and variables that you listed
18 in that paragraph?

19 A Well, I think an RFP, as I mentioned before, is
20 going to consider the provisions and features of the plan
21 and the demographics of the plan. As I indicated before,
22 an RFP is not going to be able to properly address how the
23 plan is administered on a daily basis.

24 Q Right.

25 A That knowledge is not going to -- the knowledge of

1 Q Okay. You mentioned plan documents and service
2 agreements.

3 What other kinds of documents do you typically
4 look at in generating the data that goes into the OHC
5 database?

6 A Well, I'll looking at summary plan descriptions,
7 and I'll also look at, for example, depending on the plan,
8 the specific adoption agreement. I may also look at
9 materials related to participant enrollments. So, for
10 example, a brochure versus looking at a summary plan
11 description, that's -- those are typically what I review.

12 Q Let's go back to service agreements.

13 You mentioned that occasionally you review service
14 agreements as part of your evaluation of -- strike that.

15 You mentioned that you occasionally review service
16 agreements as part of your work for these plans?

17 A The word --

18 MR. HUSS: Objection.

19 THE WITNESS: I'm sorry. The word "occasionally"
20 is not accurate. If I'm doing a benchmarking study, I will
21 review the service agreement, so the word "occasionally" is
22 not accurate.

23 BY MR. BATES:

24 Q So for every benchmarking exercise that you do,
25 you review the service agreements for that plan; is that

1 correct?

2 A That's correct.

3 Q How do you know which service agreements to ask
4 for?

5 A It's a pretty common term within the industry, so
6 record keepers know what a service agreement is, so they
7 know to provide it in addition to any amendments. So it's
8 just a -- it's -- it's a common form. It would be like
9 asking a plan sponsor for a plan document. They would know
10 exactly what it is.

11 Q Okay. And for the 13 plans that were the
12 comparator plans for purposes of your report in this case,
13 did you review all of the service agreements for those
14 plans?

15 A At the time that I would have done the
16 benchmarking study, yes.

17 Q At the time that you would have done the
18 benchmarking study for those comparator plans; correct?

19 A Right. So if I did a study in 2012 that's in the
20 comparator group, I would have looked at the service
21 agreement at that time.

22 Q Would you have looked at all of the service
23 agreements that were in effect during 2012 or for what --
24 from what period of time would you have reviewed service
25 agreements?

1 A I would have looked at the service agreement in
2 effect for the particular plan as of the date that I did
3 the study.

4 So, in other words, a service agreement might have
5 been executed in 2011 and the study was done in 2012, but
6 unless there was an amendment to that service agreement,
7 the 2011 agreement would be effective for 2012.

8 Q Did you review any service agreements in this case
9 between the Safeway plan and any of its service providers?

10 A Yes. As documented in my report, I reviewed the
11 JPMorgan service agreement.

12 Q Any other service agreements?

13 A No. Because my task was specific to JPMorgan and
14 Great-West and Empower.

15 Q In your work conducting benchmark studies of funds
16 in the OHC database, including the comparator funds --

17 A Plans.

18 Q -- plans -- sorry -- have you ever asked for any
19 underlying documents, additional documents that are part of
20 the services in a service agreement?

21 MR. HUSS: Objection.

22 THE WITNESS: You would have to give me an
23 example.

24 BY MR. BATES:

25 Q Is your analysis confined to the service agreement